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4 IN THE UNITED STATES DISTRICT COURT

5 FOR THE NORTHERN DISTRICT OF CALIFORNIA

6

7 KEITH DAVIS,

8 Plaintiff,

9 v.

10 COMBINED INSURANCE,

11 Defendant.

Case No. 17-cv-02655-MMC

12

13 **ORDER GRANTING DEFENDANT'S**  
**MOTION TO DISMISS**

14 Re: Dkt. No. 39

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16 Before the Court is defendant Combined Insurance's ("Combined") Motion to  
17 Dismiss, filed February 7, 2018. Plaintiff Keith Davis ("Davis") has filed opposition, to  
18 which Combined has replied. The Court, having read and considered the papers filed in  
support of an in opposition to the motion, deems the matter appropriate for determination  
on the parties' respective written submissions, hereby VACATES the hearing scheduled  
for March 16, 2018, and rules as follows.

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20 The initial complaint in the above-titled action was filed on May 8, 2017, alleging a  
21 single cause of action for breach of contract, specifically, Combined's denial of Davis's  
22 claim for death benefits under an insurance policy written by Combined. On August 2,  
23 2017, Davis filed a First Amended Complaint ("FAC"), again alleging a single cause of  
24 action for the same asserted breach. By order filed January 10, 2018, the Court found  
25 the "insurance policy at issue does not afford death benefits," dismissed Davis's cause of  
26 action for breach of contract, and afforded Davis leave to plead, if he could do so, a claim  
27 based on representations made by Combined's agent. (See Order, filed January 10,  
2018, at 1:20-26.)

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On January 26, 2018, Davis filed a Second Amended Complaint ("SAC"), in which

1 he asserts the following three causes of action: (1) "Breach of Contract"; (2)  
2 "Misrepresentation"; and (3) "Fraud". By the instant motion, Combined moves to dismiss  
3 the SAC in its entirety.

4 First, as Combined points out, Davis was not afforded leave to amend to reassert  
5 his cause of action for breach of contract. (See id. at 1:23 (dismissing breach of contract  
6 claim without leave to amend).)

7 Accordingly, to the extent Combined seeks dismissal of Davis's claim for breach of  
8 contract, the motion is hereby GRANTED and said cause of action is hereby  
9 DISMISSED.

10 Combined next argues that each of the two remaining causes of action is barred  
11 by the applicable statute of limitations. See Butcher v. Truck Ins. Exch., 77 Cal. App. 4th  
12 1442, 1470 (Cal. Ct. App. 2000) (holding two-year statute of limitations applies to  
13 negligent misrepresentation claims); Ivanoff v. Bank of Am., N.A., 9 Cal. App. 5th 719,  
14 734 (Cal. Ct. App. 2017) (holding fraud claims "governed by" three-year statute of  
15 limitations). As set forth below, the Court agrees.

16 Davis's misrepresentation and fraud claims are based on his allegation that, at the  
17 time he purchased the policy here at issue, Combined's agent falsely told him the policy  
18 provided death benefits. Combined denied Davis's claim for death benefits on April 3,  
19 2014 (see SAC at 1:26-27), on the express ground that the policy "does not provide any  
20 death benefits" (see FAC Ex. B); see also Rodriguez v. Sony Computer Entm't Am., LLC,  
21 801 F.3d 1045, 1054 (9th Cir. 2015) (holding allegations made in amended complaint  
22 must be "consistent with the [prior] pleading") (internal quotation and citation omitted);  
23 Sharp v. Fresno Cty. Jail, No. 15-CV-0001-DLB, 2015 WL 6689915, at \*4 (E.D. Cal. Oct.  
24 28, 2015) (holding plaintiff "cannot omit prior factual allegations in an attempt to state a  
25 claim" in amended pleading). Such denial was sufficient to put Davis on inquiry notice as  
26 to the falsity of the statements he alleges were made by Combined's agent regarding  
27 coverage, and, consequently, Davis's misrepresentation and fraud claims accrued more  
28 than three years before the instant action was filed. See Kline v. Turner, 87 Cal. App. 4th

1 1369, 1374 (Cal. Ct. App. 2001) (holding cause of action accrues and statute of  
2 limitations begins to run on date plaintiff has information that would put reasonable  
3 person on “inquiry” notice). Thus, assuming, arguendo, Davis’s misrepresentation and  
4 fraud claims relate back to the date on which Davis filed his initial complaint, those claims  
5 are, in each instance, time-barred.

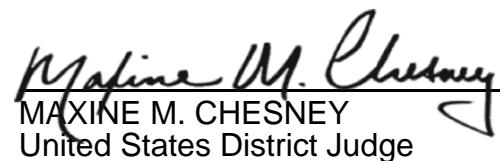
6 Accordingly, to the extent Combined seeks dismissal of Davis’s claims for  
7 misrepresentation and fraud, the motion is hereby GRANTED and said causes of action  
8 are hereby DISMISSED.

9 Lastly, Davis’s request for leave to amend to add the California Department of  
10 Corrections and Rehabilitation (“CDCR”) as a defendant is unavailing. Davis seeks such  
11 leave on the ground that “CDCR allowed [Combined] to set up a sales center at San  
12 Quentin State Prison,” thereby “tacitly endors[ing]” Combined’s allegedly fraudulent sale,  
13 which was made at that facility. (See Opp. at 1:21-23.) For the reasons stated above  
14 with respect to Davis’s misrepresentation and fraud claims against Combined, any such  
15 claim against CDCR likewise would be time-barred.

16 Accordingly, Davis’s request for further leave to amend is hereby DENIED.  
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18 **IT IS SO ORDERED.**

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20 Dated: March 7, 2018  
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MAXINE M. CHESNEY  
United States District Judge